

**STATE OF TEXAS
DEPARTMENT OF INFORMATION RESOURCES
CONTRACT FOR PRODUCTS AND RELATED SERVICES**

Southwestern Bell Telephone, L.P. d/b/a SBC DataComm

1. Introduction

A. Parties

This Contract for products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources (hereinafter "DIR") with its principal place of business at 300 West 15th Street, Suite 1300, Austin, Texas 78701, and Southwestern Bell Telephone, L.P. d/b/a SBC DataComm (hereinafter "Vendor"), with its principal place of business at 175 E. Houston, San Antonio, Texas 78205.

B. Compliance with Procurement Laws

This Contract is the result of compliance with applicable procurement laws of the State of Texas. DIR issued a solicitation on the Texas Building and Procurement Commission's Electronic State Business Daily, Request for Offer (RFO) DIR-SDD-TMP-054, on January 8, 2005, for Videoconferencing Hardware and Related Services. Upon execution of this Contract, a notice of award for RFO DIR-SDD-TMP-054 shall be posted by DIR on the Electronic State Business Daily.

C. Order of Precedence

This Contract; Appendix A, Standard Terms and Conditions For Products and Related Services Contracts; Appendix B, Vendor's Historically Underutilized Businesses Subcontracting Plan; Appendix C, Price List; Appendix D, Services Description; Exhibit 1, Vendor's Response to RFO DIR-SDD-TMP-054, including all addenda; and Exhibit 2, RFO DIR-SDD-TMP-054, including all addenda; are incorporated by reference and constitute the entire agreement between DIR and Vendor. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, then Appendix A, then Appendix B, then Appendix C, then Appendix D, then Exhibit 1 and finally Exhibit 2. In the event and to the extent any provisions contained in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded earlier provisions.

2. Term of Contract

The term of this Contract shall be one (1) year commencing on the last date of approval by DIR and Vendor. Prior to expiration of the original term, DIR and Vendor may extend the Contract, upon mutual agreement, for up to three (3) optional one-year terms.

3. Product and Service Offerings

A. Products

Products available under this Contract are limited to videoconferencing hardware and related peripherals/software manufactured by the following:

1. Polycom
2. Tandberg

Vendor may incorporate changes to their product offering; however, any changes must be within the scope of products awarded based on the posting described in Section 1.B above.

B. Services

Services from Vendor for Polycom and Tandberg product lines available under this Contract include but are not limited to: product selection/configuration assistance, installation, troubleshooting, maintenance and support, technical services, managed services, and product training. Online meeting services (software/internet), video streaming via the internet, and videoconferencing connection services are excluded from this Contract. Vendor may incorporate changes to their service offering; however, any changes must be within the scope of services awarded based on the posting described in Section 1.B above.

4. Pricing

A. Manufacturer's Suggested Retail Price (MSRP)

MSRP is defined as the product sales price suggested by the manufacturer or publisher of a product.

B. Customer Discount

The minimum Customer discount for all products and services will be the percentage off MSRP as specified in Appendix C Product Pricing.

Customer Discount includes the DIR administrative Fee specified in Section 5.

C. Customer Price

1) The price to the Customer shall be calculated as follows:

$$\text{Customer Price} = \text{MSRP} - \text{Customer Discount}$$

2) Customers purchasing products and services under this Contract may negotiate more advantageous pricing or participate in special promotional offers. In such event, a copy of such better offerings shall be furnished to DIR upon request.

3) If pricing for products or services available under this Contract are provided at a lower price to: (i) an eligible Customer who is not purchasing those products or

services under this Contract or (ii) any other entity or consortia authorized by Texas law to sell said products and services to eligible Customers, then the available Customer Price in this Contract shall be adjusted to that lower price. This Contract shall be amended in accordance with paragraph 4.B. of Appendix A within ten (10) business days to reflect the lower price.

D. DIR Administrative Fee

The administrative fee specified in Section 5 below shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

E. Shipping and Handling Fees

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be Free On board Customer's destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

F. Tax-Exempt

As per Section 151.309, Texas Tax Code, Customers under this Contract are exempt from the assessment of State sales, use and excise taxes. Further, Customers under this Contract are exempt from Federal Excise Taxes, 26 United States Code Sections 4253(i) and (j).

G. Travel Expense Reimbursement

Pricing for services provided under this Contract are exclusive of any travel expenses that may be incurred in the performance of those services. Travel expense reimbursement may include personal vehicle mileage or commercial coach transportation, hotel accommodations, parking and meals; provided, however, the amount of reimbursement by Customers shall not exceed the amounts authorized by the current State Travel Regulations. Travel time may not be included as part of the amounts payable by Customer for any services rendered under this Contract. The DIR administrative fee specified in Section 5 below is not applicable to travel expense reimbursement. Anticipated travel expenses must be pre-approved in writing by Customer.

H. Changes to Prices

Vendor may change the price of any product or service at any time, based upon changes to the MSRP, but discount levels shall remain consistent with the discount levels specified in this Contract. Price decreases shall take effect automatically during the term of this Contract and shall be passed onto the Customer immediately.

5. DIR Administrative Fee

A) The administrative fee to be paid by the Vendor to DIR based on the dollar value of all sales to Customers pursuant to this Contract is two percent (2%). Payment will be

calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$2,000.

B) All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Vendor. Any change in the administrative fee shall be incorporated in the price to the Customer.

6. Notification

All notices under this Contract shall be sent to a party at the respective address indicated below.

If sent to the State:

Sherri Parks, Service Delivery Division
Department of Information Resources
300 W. 15th St., Suite 1300
Austin, Texas 78701
Phone: (512) 475-4700
Facsimile: (512) 475-4759
Email: sherri.parks@dir.state.tx.us

If sent to the Vendor:

Marcus Montemayor
SBC Communications, Inc.
712 East Huntland, Room 137
Austin, Texas 78752
Phone: (512) 421-5160
Facsimile: (512) 870-4388
Email: mm3894@sbc.com

7. Services Description

Services provided under this Contract shall be in accordance with the Services Description as set forth in Appendix D of this Contract. No changes to the Services Description terms and conditions may be made unless previously agreed to by Vendor and DIR.

8. Authorized Exceptions to Appendix A, Standard Terms and Conditions for Product and Related Services Contracts

a. **Section 3, Definitions**, the below is hereby restated as follows:

D. Order Fulfiller – means SBC Communications, Inc.

H. Manufacturer – means Polycom or Tandberg Corporation

b. **Section 6.B, Use of Order Fulfillers**, is hereby deleted in its entirety.

c. **Section 6.C, Product Warranty and Return Policy**, is hereby restated as follows:

Vendor will adhere to the Vendor's and/or manufacturer's then-currently published policies concerning product warranties and returns. Product warranty and return policies for Customers will not be more restrictive or more costly than warranty and return policies for other similarly situated Customers for like products.

d. **Section 6.E.3, Website Compliance Checks**, is hereby restated as follows: Periodic compliance checks of the information posted for the Contract on Vendor's website will be conducted by DIR. Upon request by DIR, Vendor shall provide verifiable documentation that pricing listed upon this website is uniform with the pricing as

stated within Appendix C, Price List.

- e. **Section 7.A, Purchase Orders**, is hereby restated as follows:
All Customer Purchase Orders will be placed directly with the Vendor. Customers shall reference Contract Number DIR-SDD-210 on the Purchase Order. Accurate Purchase Orders shall be effective and binding upon Vendor when accepted by Vendor.

This Contract is executed to be effective as of the date of last signature.

**Southwestern Bell Telephone, L.P.
d/b/a SBC DataComm**

**The State of Texas, acting by and through the
Department of Information Resources**

Authorized By: Signature on File

Authorized By: Signature on File

Name: James n. Shelgren

Name: Brian S. Rawson

Title: Regional Vice President - Sales

Title: Director of Service Delivery

Date: November 16, 2005

Date: November 14, 2005

Legal: chk 11.10.05